

The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 (2000 State Bar Edition). (This is a GIL).

August 29, 2001

Dear Xxxxx:

This letter is in response to your letter dated July 12, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We are writing in response to your General Information Letter (GIL) dated May 31, 2001. We are in agreement the conveyor systems are tangible personal property. However, we request further clarification and re-determination regarding the application of Service Occupation Tax vs. Retailers' Occupation Tax to the sale of our client's product.

TANGIBLE PERSONAL PROPERTY

As noted, we are in agreement the conveyor systems remain tangible personal property for the reasons cited by the Illinois Department of Revenue:

- I. The conveyor systems can be removed without damage to the item or to the real estate and;
- II. The seller can repossess the item in the event of non-payment.

SERVICE OCCUPATION TAX vs. RETAILERS' OCCUPATION TAX

We have reviewed the information provided and the court case cited (Velten & Pulver v. Department of Revenue, 29 Ill. 2d 524 (1963)) on which your decision is based. We are providing the following information for redetermination

Pursuant to 86 Ill. Admin. Code 130.2115 *Sellers of Machinery, Tools and Special Order Items* we believe our client is subject to the retailers occupation tax.

(a) When Liable for Retailers' Occupation Tax (Emphasis Added)

(1) Sellers of machinery, tools, dies, jigs, patterns, gauges, models, exhibits...

Our client is a seller of machinery (i.e. conveyor systems).

(2) The fact that it is not a stock item and is only produced after an order is received, or is an alteration of a standard item, is not sufficient to exempt it from Retailer's Occupation Tax...

Our client does maintain the conveyor system parts (rollers, belts, sensors, motors) as a stock item. Depending upon the size of a conveyor system, a section of the system may be produced after an order is received. Our client recently established a catalog department from which a customer can order standard sections and parts. Our client also maintains a website for "Products" which details 16 different conveyor systems and 12 model types available to potential customers.

(3)...the sale is taxable if the designing of the property that is to be sold is done by the purchaser, or by someone other than the seller hired by the purchaser, but the sale is not taxable if the seller is responsible for furnishing the service of designing such property or for contributing substantially to the designing of such property.

Our client provides the service of designing a **conveyor system** based on the customer's square footage, the customer's product type, and the purpose of distribution. A conveyor system is then assembled utilizing parts (rollers, belts, sensors, motors, etc.), which are maintained in our client's inventory database.

(4)...a single repeat order or simultaneous orders from a user (so-called multiple orders) for 50 or more of the same item which would otherwise qualify for exemption...will be deemed to be volume production and will be subject to Retailers' Occupation Tax...

Our client manufactures the parts and assembles the conveyor system in 10 foot sections. The sections can be obtained in 12 inch, 18 inch or 24-inch widths. Depending on the size of the project, the sections can be assembled in a large volume. The parts (12, 18, or 24 inch rollers, control panels, sensors) for the conveyor system are continually in process and inventoried until utilized.

(b) When Not Liable for Retailers' Occupation Tax (Emphasis Added)

(I)...does not incur Retailers' Occupation Tax liability with respect to the sale, if the following tests for exemption are **all** met in the transaction;

(A) The purchaser employs the seller primarily for his engineering or other scientific skill to design and produce the property on special order for the purchaser and to meet the particular needs of the purchaser;

Our client does provide engineering design of a conveyor system. It would not be cost effective for our client to design the various parts and equipment utilized within a conveyor system. All parts utilized are standard

inventory. As noted previously, approximately 30% of the total cost to design, manufacture and install the material handling system is related to engineering design.

(B) the property has use or value only for the specific purpose for which it is produced, and

Our client can repossess the property and resell the property to another customer. Currently, our client has a project that has been canceled by a customer. Approximately, 80% of the parts manufactured by our client for that specific project will be repossessed and utilized in other projects.

(C) the property has use or value only to the purchaser. The Department has defined "use or value only to the purchaser" as the property is considered to be subject to the Service Occupation Tax if it is not standard enough to be stocked or to be ordered from a catalog or other type of sales literature, but has to be produced in accordance with special requirements which are peculiar to the purchaser and not common to someone else whose conditions for possible use of the property can be shown by the Department to be reasonably comparable to those of the purchaser.

As previously noted, our client utilizes standard inventory in the assembly of the conveyor system. The system is manufactured and partially assembled at their headquarters out-state. The final assembly is completed at the customer's location. Our client recently implemented a catalog department in an attempt to meet customer demand for their product.

In order for our client to be categorized as a business subject to the Service Occupation Tax all three requirements of *86 Ill. Admin. Code 130.2115 Sellers of Machinery, Tools and Special Order Items (b) (1) (A), (B) and (C)* must be met. Our client has the potential of meeting only Subsection (b)(1)(A). However, our client does meet the requirements set forth for a business subject to the Retailers' Occupation Tax (Subsection (a)).

Velten & Pulver, Inc. v. Department of Revenue. 29 Ill. 2d 524 (1963)

In this court case, the taxpayer advertised as a specialist in bakery engineering. Every conveyor system was constructed upon special order and only after preliminary drawings and detailed plans had been formulated and prepared for each integral part by qualified engineers over a period of many months.

The bakery equipment, when installed, had value, other than salvage, only to the purchaser for the specific purpose for which it was designed. The machine purchased by the taxpayer was useless for any purpose other than manufacturing the specific parts that it requires in its operation.

The decision in *Velten & Pulver, Inc.* appears to focus on the guidelines established in *86 Ill. Admin. Code 130.2115 Sellers of Machinery, Tools and Special Order Items*. We believe we have established our client is more clearly defined as a business subject to the Retailers' Occupation Tax.

Similarities to Velten & Pulver, Inc.

Our client is similar to **Velten & Pulver, Inc.** in that they are able to construct a conveyor system to fit the existing physical plant and thereby eliminate the need for major plant alterations.

Differences from Velten & Pulver, Inc.

Our client is different from *Velten & Pulver, Inc.* as noted in the table below.

Velten and Pulver	Our Client
No two installations are identical	Has installed systems which are identical
Offers material handling system only to the baking industry	Offers a complete range of material handling products to meet the unique requirements of a variety of markets
All of the work is by special order and none of the system can be fabricated prior to receiving the customer's order, nor can the parts thereof be stocked.	Portions of the system (i.e. electrical control panels, rollers, belts) can be prefabricated. Also maintains a catalog department for some conveyor systems.
The equipment when installed had value, other than salvage, only to the purchaser.	The equipment can be removed and installed at another location or utilized in another project.

SUMMARY

Based on the guidelines established in 86 Ill. Admin. Code 130.2115 Sellers of Machinery, Tools and Special Order Items and the lack of similarity to Velten & Pulver Inc. we believe our client more clearly represents a business subject to the Retailers' Occupation Tax.

REQUEST FOR RULING

Enclosed you will find the following exhibits:

- I. A reproduction of a project Scope.
- II. A reproduction of an actual Contract.
- III. Illinois Department of Revenue General Information Letter dated May 31, 2001
- IV. Crowe Chizek and Company LLP Request for General Information Letter dated May 9, 2001

We respectfully request the Illinois Department of Revenue review the additional information provided in this letter and issue a General Information Letter indicating our clients' material handling systems are subject to the Retailers Occupation Tax.

Thank you for your prompt attention in this matter. Please call the undersigned if you have any questions or need additional information. Also, please call the undersigned prior to issuing a letter that does not indicate that our clients' material handling systems are subject to the Retailers' Occupation Tax.

As stated in our May 31, 2001 letter to you, for the purposes of the Illinois sales tax laws, the Department uses an intention test to determine whether items remain tangible personal property after installation or become a part of realty. The additional information you provided by letter and over the phone led us to the conclusion that the conveyors in question are intended to stay tangible personal property. It is our understanding that while some pieces of the conveyor system are bolted to the floor, others are on wheels and can be moved to reconfigure the system as the need arises. Further, you stated that customers can purchase additional pieces for their systems in order to keep the systems as flexible as possible.

Based upon the information provided, it is our opinion that Retailers' Occupation Tax is incurred. The Retailers' Occupation Tax Act imposes a tax upon persons engaged in the business of selling at retail tangible personal property. 35 ILCS 120/2 (2000 State Bar Edition). The Use Tax Act imposes a tax upon the privilege of using in this State tangible personal property purchased at retail from a retailer. 35 ILCS 105/3 (2000 State Bar Edition).

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk